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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No.822/2003

APPELLANT — Krishna Yadav, S/o Chaitram Yadav, aged 32 years, resident of Jalampur Ward Dhamtari P.S. Dhamtari District Dhamatri (C.G.)

Versus

RESPONDENT — The State of Chhattisgarh, Through the District Magistrate, Dhamtri (C.G.)

DB: HON'BLE SHRI JUSTICE L.C. BHADOO &
HON'BLE SHRI JUSTICE SUNIL KUMAR SINHA, JJ.

Appearance:

Shri Anand Mohan Tiwari, Counsel for the appellant.

Shri Satish Gupta, Dy. Govt. Advocate for the State.

ORAL JUDGMENT
(29.11.2007)

L.C. BHADOO, J.

Heard.

The appellant – Krishna Yadav has preferred this appeal under Section 374 (2) of the Code of Criminal Procedure questioning the legality and correctness of the judgment of conviction and order of sentence dated 1st February 2003 passed by the Additional Sessions Judge, Dhamtari in S.T. No.429/2000, whereby the learned Additional Sessions Judge

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after holding the accused/appellant guilty for commission of the offence under Section 302 of the IPC for committing murder of his keep (second wife) namely Kherunisha and also under Section 201 of IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default of payment of fine to further undergo R.I. for 1 year and R.I. for 7 years and to pay a fine of Rs.1000/-, in default of payment of fine to further undergo R.I. for one year. The substantive sentences were directed to run concurrently.

Co-accused – Bhudha Bai, mother of the accused – Krishna Yadav, has also been convicted for commission of the offence under Section 201 of the IPC and sentenced to undergo R.I. for 7 years and to pay a fine of Rs.1000/-, in default of payment of fine to further undergo R.I. for 1 year. It appears that Budha Bai has not preferred any appeal.

Case of the prosecution, in brief, is that the accused/appellant had kept Kherunisha (since deceased) as his wife in the vicinity of Jalampur of Dhamtari. They used to quarrel as the accused/appellant – Krishna Yadav used to doubt fidelity of Kherunisha-deceased. In between 24.09.2000 - 30.09.2000, the deceased was sitting near a hole of snake. The accused asked her to get up, but the deceased refused to get up, on which, some altercation took place between the two and accused – Krishna attacked the deceased with the club 3-4 times and brought her inside his house. When she started running, he again caught her,

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attacked her with club 10-15 times, as a result of which, Kherunisha sustained injuries on hand, head, due to which, she became unconscious. Thereafter, accused brought the deceased in his house by dragging her and she died in the night. Thereafter, the accused went to his mother – Budha Bai and both of them, in order to screen the evidence of murder, buried the body in the kitchen garden of the house. On 29.09.2000, when foul smell started emanating from the house of the accused, merg intimation (Ex.-P/19) was given by Santosh Shandilya to the Police Station, Dhamtari, based on that, *Dehatinalisi* (Ex.P/18) was prepared on 30.09.2000 by the Investigating Officer – Shri L.B.K. Shrivastava and the crime was registered. The investigating officer left for the house of the accused and after giving notices to the Panchas prepared inquest (Ex.-P/3) on the body of the deceased-Kherunisha. The body was sent for postmortem examination to the Govt. Hospital, Dhamtari, where Dr. A.G. Sheikh, (PW-8) conducted the postmortem and prepared the report (Ex.-P/15). He opined that Kherusnisha died on account of injuries sustained by her and death was homicidal in nature. During the investigation, accused gave memorandum (Ex.-P/6), in pursuance of that, weapon of offence – club was seized under Ex.-P/7. The investigating officer seized the blood stained soil and plain soil from the place of occurrence and sent the seized articles to the Forensic Science Laboratory, Raipur, from where report (Ex.-P/27) was received.

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During investigation, club, shirt, pant, sando banyan and Lungi stained with blood were seized. As per the FSL report, the same were found stained with blood.

After completion of the investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Dhamtari, who in turn committed the case to the Sessions Judge, Raipur, from where learned Additional Sessions Judge received the case on transfer. The prosecution in order to establish the charge against the accused persons examined 13 witnesses.

The statement of the accused persons were recorded under Section 313 of the Code of Criminal Procedure, in which they denied the material appearing against them and stated that they are innocent and have been falsely implicated in the crime in question.

The learned Additional Sessions Judge, after hearing the counsel for respective parties, convicted and sentenced the accused as aforementioned.

We have heard Shri Anand Mohan Tiwari, Counsel for the appellant and Shri Satish Gupta, Dy. Govt. Advocate for the State.

As far as homicidal death of Kherunisha is concerned, Shri Tiwari has not disputed this fact. Moreover, PW- 8 Dr.A.G. Sheikh has stated that on 30.09.2000 on the order of S.D.M., Dhamtari, he conducted the postmortem on the body of Kherunisha, which was identified by her son, Ahilya Bai and

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Dhan Bai. He found the following injuries on the body of the deceased :

(i) There was a incised wound on the palm of right thumb in the size of 1 ½ " x 1" x 1", clotted blood was present.

(ii) There was a lacerated wound on the median frontal forehead region. There was swelling and colour of injury was reddish in the size of 2" x 1" x ½".

(iii) Incised wound on the right parietal region in the size of 3" x 1" x ½", maggots were present in the injury.

(iv) There was a lacerated wound behind injury No.3 on the head in the size of 1" x ½" x ½".

(v) There was thumb and finger mark on the neck on account of pressing the same, there was echimosis and clotted blood in it.

(vi) There was fracture in the lower middle region.

(vii) Three teeth were missing and maxilla bone of the jaw was found fractured.

According to the Doctor, the injuries were antimortem in nature. The death was as a result of shock, coma on account of the injures, there was haemorrhage, the death was homicidal in nature.

In view of the above medical evidence, it is established that the death of Kherunisha was homicidal in nature.

As far as complicity of the accused in the crime in question is concerned, in this case, there is no ocular or direct evidence

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

regarding complicity of the accused. The conviction rests on the following circumstantial evidence :

(1) That PW-11- Shiv Prasad Sarwa has stated that before the death of the deceased-lady, he saw the accused – Krishna Yadav quarreling with one lady and he took her inside the house. He heard the cries of the lady "save save".

(2) That body of Kherunisha was found in the kitchen garden of the accused.

(3) There were blood spots on wall and floor of kitchen of the house of the accused.

(4) That blood stained clothes of the deceased and club were seized at the instance of the accused

In order to connect the accused with the crime in question based on the circumstantial evidence, the prosecution is required to establish complete chain of the circumstantial evidence. In the matter of **Dhananjoy Chatterjee vs. State of W.B. (1994) 2 SCC 220,** the Apex Court held that :

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained

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by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

First Circumstance:

As far as first circumstance is concerned, PW-11 – Shiv Prasad Sarwa has stated that at about 7:00 p.m., after cleaning the cattle room, he was going to throw rubbish in the field. He heard the cries from the side of the house of Kherunisha "save save", on which, he became disturbed. The cries were coming from a distance of 20 ft. He went towards that side and saw Krishna Yadav along with a lady. Krishna Yadav was asking her to go to the house and thereafter, the lady and Krishna Yadav went towards the house. Thereafter, this witness has turned hostile, as he has not fully supported the prosecution case. Even on cross-examination by the Additional Public Prosecutor he has declined the portions of the statement given by him under Section 161 of Cr.P.C. to the Investigating Officer that he saw the accused attacking Kherunisha with hands and fists. He has also

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denied that he saw accused – Krishna Yadav attacking Kherunisha. He has denied the suggestion that he scolded the accused saying that why he is attacking Kherunisha. He stated that it is also incorrect to say that he saw the accused dragging Kherunisha inside the house. He has also denied that thereafter, cries of Kherunisha became silent. He did not saw Krishna Yadav towards that side, therefore, based on this evidence of Shiv Prasad Sarwa, which is not cogent, clear evidence, rather this witness has denied that he saw the accused attacking Kherunisha. He has simply stated that when he went towards the house of Krishna Yadav, Krishna Yadav and one lady were present there. Krishna Yadav was asking the lady to go to the house and thereafter, both of them went to the house. Even though, he has not identified that in fact, the lady to whom the accused was attacking and was asking to go inside the house was Kherunisha. He has stated that his house is in the neighbourhood of accused-Krishna Yadav, therefore, it was not possible that he did not know the name of Kherunisha, as she was residing with the accused. Therefore, based on this evidence of Shiv Prasad Sarwa, no definite conclusion can be arrived that in fact, he saw the accused Krishna Yadav attacking Kherunisha.

Second Circumstance:

As far as this circumstance is concerned, it is established that body of Kherunisha was found in the kitchen garden of the house of the accused. It has been established by the evidence of

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आदेश पत्रक (पूर्वानुबद्ध)

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PW-4 – Aghnu Ram, who has stated that a foul smell was emanating from the house of Krishna Yadav. The matter was reported to the Police and Police came in the night, broke open the door. When they went in the kitchen garden of the house, they saw that the body of a lady was found covered with dust and rubbish. The body was seen by the police and doctor. Thereafter, the police put a policeman on duty and left. On the next day morning, the Inquest on the body of the deceased was prepared. For identifying the body two children and Uncle were called from Nawagaon, who identified the body. PW-6 – Mohd. Ayub Khan has corroborated the evidence of this witness. PW-5 – Anup Dewangan has also stated that inquest was prepared in his presence, which bears his signature. Even PW-7 – Santosh Shandilya has stated that a foul smell was coming from the house of Krishna Yadav, police was informed by him, Panchas came and saw the body of a lady in the house covered with dust and rubbish. PW-9 – D.R. Margiya, Naib Tehsildar has also stated that in his presence on 30th September 2000 at 2:20 p.m. in the house of Krishna Yadav, body of a lady was found, the same was identified by son of the deceased. Based on the clothes of Kherunisha, body was identified by Sher Khan, Jamir Khan, Ahilya Bai, Shanti Bai, Santosh Kumar, Kriparam. The identification memo (Ex.-P/1) was prepared by him. Thereafter, inquest (Ex.-P/3) was prepared on the body of Kherunisha. The body was lying in the kitchen garden, the said place was

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accessible to everyone and anybody could go to that place. The kitchen garden was open; it was fenced with wooden sticks of about 1 ½ ft. to 2 ft in height. Therefore, it is established that the body of Kherunisha was recovered from the kitchen garden of he house of the accused/appellant.

Third circumstance & Fourth circumstance

PW-5 – Anup Dewangan has stated that the blood stained soil and plain soil were seized from the place of occurrence under Ex.-P/8. The same has been corroborated by the evidence of Lalji Shukla, Sub Inspector, who has stated that on 30th September 2000, blood stained soil and plain soil were collected from the wall and floor of the kitchen of the accused house. As per the FSL report (Ex.-P/27), the soil was found stained with blood. PW-12 – Brijendra Shrivastava has stated that on 2.10.2000 at about 11:40 a.m., the clothes of the accused stained with blood, one terricoat shirt, one pant, one sando banayan, lungi were seized under Ex.-P/2. He has further stated that the blood stained club was seized under Ex.P/7 at the instance of the accused.

Now the question remains that whether on the above circumstantial evidence, the accused can be connected with the crime in question.

It is an admitted position that when the neighbourers noticed foul smell emanating from the house of the accused on 29/09/2000, the police was informed, police came and after breaking up the door of the house, the body was identified,

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inquest was prepared. At that time, accused was not present in the house. PW-9 – D.R. Margiya in whose presence body was identified and inquest was prepared, on cross-examination has stated that body covered with rubbish and dust was lying in the kitchen garden and kitchen garden was accessible to anyone and the same was fenced with wooden sticks of the height of 1 ½ to 2 ft., kitchen garden was open. PW-10 – Ghanshyam Yadav has stated that there was an open land from all sides at the place of occurrence. In this connection, if the evidence of Mohd. Ayub Khan (PW-6) is scrutinized in para 13 he has stated that Kherunisha was a lady of free nature, she used to return to her house late in the night and sometimes, even she was not returning to the house also. Different kinds of persons used to visit the house of the accused, they used to play gambling and consume liquor, Ganja at the house of the accused.

In view of above fact, it is established that Kherunisha was a lady of free nature and all kinds of persons used to visit the house, where body of Kherunisha was found. People used to come and consume liquor, ganja at that place and there is no evidence that anybody saw the accused attacking Kherunisha Bai. Looking to the place where body was found, which was accessible to everybody and looking to the evidence of PW-6 that all kinds of persons used to visit the house, where Kherunisha used to reside with the accused, they used to gamble, consume liquor and ganja, there is no cogent, clear evidence to connect the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 12	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

accused with the murder of Kherunisha except the fact that the body of Kherunisha was found in an open place in the kitchen garden in the house of the accused and some blood stained soil, plain soil were found in the kitchen of the house of the accused. Merely on the suspicion, the accused cannot be connected with the crime in question and evidence adduced by the prosecution does not stand up to the test laid down by the Apex Count in various judgments connecting the accused based on the circumstantial evidence. In criminal appeal No.202/2006 decided on 8/5/2007, ***Sujoy Sen @ Sujoy Kr. Sen vs. State of West Bengal, 2007(3) Supreme 1019*** the Apex Court held that in the case of circumstantial evidence prosecution has to establish the chain of circumstances which inevitably connect the accused to the crime. Even if a single link breaks, the whole prosecution case collapses.

Though as per the FSL report, the blood was found on the clothes of the accused, one club was also seized at the instance of the accused, which was found blood stained, but there is no evidence that blood which was found on the clothes, club was human blood and that too the same was matching with the blood group of the deceased. Even the prosecution case is not definite regarding the date when the crime was committed. It has been stated that the crime was committed in between 24.09.2000 to 30.09.2000. PW-11 has not categorically stated that on which date the accused was saying to the lady to go to the house,

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 13	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

therefore, the evidence of this witness is not definite on the point of date when he saw the accused with that lady.

For the foregoing reasons, we are of the considered opinion that the prosecution has not been able to bring on record the clinching circumstantial evidence to connect the accused with the crime in question beyond reasonable doubt. Therefore, finding of the trial Court connecting the accused with the crime in question and convicting him and imposing sentence for commission of the offence under Sections 302 and 201 of the IPC cannot be sustained.

In the result, the appeal partly succeeds.

The conviction and sentence imposed upon the accused/appellant under Sections 302 and 201 of the IPC are set aside. It is stated that the appellant is in jail since the date of judgment i.e. 1/2/2003, therefore, he be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

Shyna

शासकीय क्षेत्रीय मुद्रणालय, राजनांदगांव —FS/59— 8/2007 —30,000.